Supreme Court, U.S.
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No. 01-217

IN THE

Supreme Court of the United States

LAKE CHARLES PILOTS, INC.,

Petitioner,

v.

HUBERN DOXEY,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE COURT OF APPEAL OF LOUISIANA, THIRD CIRCUIT

BRIEF IN OPPOSITION

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QUESTION PRESENTED FOR REVIEW

Respondent is a nonseafarer whose claim is based on the general maritime law. Respondent is not, as Petitioner states, "seeking relief under the Admiralty Extension Act." The Admiralty Extension Act provides the basis for maritime jurisdiction in this case, but does not provide Respondent with a cause of action. Pecuniary damages sought by Respondent include not only property damage and mental anguish resulting from property damage, as stated by Petitioner, but also economic loss as a result of being able to pursue his chosen profession due to loss of his property. The issue presented for review in this case is whether punitive damages are available to the Respondent in this case.

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STATEMENT OF THE CASE

Respondent offers the following corrections to the Statement of the Case provided by Petitioner. Respondent's claim was originally filed in the 38th Judicial District Court for the Parish of Cameron, State of Louisiana, not the 39th Louisiana Judicial District Court, as stated by Petitioner. Respondent did not, as stated by Petitioner, testify that his *general* damages did not exceed $25,000, but rather Respondent's testimony indicated that his *pecuniary* damages probably totaled less than $25,000.

REASONS FOR DENYING THE WRIT

I. PUNITIVE DAMAGES HAVE BEEN A WELL-RECOGNIZED REMEDY OF THE GENERAL MARITIME LAW, EVEN PRIOR TO PASSAGE OF THE JONES ACT (46 U.S.C. § 688) IN 1920.

Even in the nineteenth century, punitive or exemplary damages were recognized as an available form of relief to admiralty claimants. Justice Story, in particular, was a proponent of the authority of the court sitting in admiralty to impose punitive damages in cases of gross misconduct. According to Professor Robertson, Justice Story wrote seven opinions affirming this principle, four in the Supreme Court and three decided while sitting as a circuit judge. David W. Robertson, *Punitive Damages in American Maritime Law*, 28 J. Mar. L. & Com. 73, 95 (1997), citing *The Amiable Nancy*, 16 U.S. (3 Wheat.) 546, 558 (1818); *La Amistad De Rues*, 18 U.S. (5 Wheat.) 385, 389 (1820); *The Apollon*, 22 U.S. (9 Wheat.) 362, 374 (1824); *The Palmyra*, 25 U.S. (12 Wheat.) 1, 15 (1827); *Chamberlain v. Chandler*, 5 F.Cas. 413 (C.C.D. Mass. 1823) (No. 2,575); *Sherwood v. Hall*,

21 F.Cas. 1292 (C.C.D. Mass. 1837) (No. 12,777); and *The Lively*, 15 F.Cas. 631 (C.C.D. Mass. 1812) (No. 8,403). Prior to 1850, twenty-five federal decisions recognized the availability of punitive damages under the general maritime law. Robertson, *supra*, at 88. And between 1850 and the passage of the Jones Act in 1920, thirty-four more federal cases were reported expressing approval of maritime punitive damages. *Id.*, at 99. It is particularly noteworthy for purposes of the case sub judice that five of these decisions were property damage cases. *Id.*, at 114-15, n.216, citing *The Eliza Lines*, 102 F. 184 (C.C.D. Mass. 1900), *reversed on other grounds*, 199 U.S. 119 (1905); *The Mascotte*, 72 F. 684 (D.N.J. 1895); *Paterson v. Dakin*, 31 F. 682 (S.D. Ala. 1887); *Gould v. United States*, 46 Ct. Cl. 214 (1911); and *Hooper v. United States*, 22 Ct. Cl. 408 (1887).

Subsequent to the passage of the Jones Act, modern admiralty courts continued to award punitive damages, and even developed a *greater* willingness to award these damages in *property damage claims*, as opposed to personal injury claims. Robertson, *supra*, at 137, citing *The Dredge General*, 1944 AMC 948 (S.D. Fla. 1944); *Protectus Alpha Nav. Co. v. North Pac. Grain Growers, Inc.*, 767 F.2d 1379, 1986 AMC 56 (9th Cir. 1985); *Thyssen, Inc. v. S.S. Fortune Star*, 777 F.2d 57, 1986 AMC 1318 (2d Cir. 1985); *Cruickshank & Co. v. Sorros*, 765 F.2d 20, 1986 AMC 381 (2d Cir. 1985); *Serguros Banvenez, S.A. v. S/S Oliver Drescher*, 761 F.2d 855, 1985 AMC 2168 (2d Cir. 1985); and *Armada Supply v. S/T Agios Nikolas*, 639 F. Supp. 1161 (S.D.N.Y. 1986).

II. THE HOLDING OF *MILES v. APEX MARINE CORP.*

Mercedel Miles was the mother of Ludwick Torregano, a Jones Act seaman who was murdered by a fellow crew member aboard the vessel M/V ARCHON. Mrs. Miles, as administratrix of her son's estate, brought an action in the United States District Court for the Eastern District of Louisiana against the vessel's owner and operator (collectively referred to as "Apex"). Her Jones Act claim alleged negligence for failure to prevent the attack on her son. She also brought an action under the general maritime law for breach of the warranty of seaworthiness (based on the hiring of an unfit crew member). She sought damages including loss of support and services, loss of society, punitive damages, and compensation to her son's estate for his pre-death pain and suffering, as well as his lost future income.

The district court struck Mrs. Miles' claims for punitive damages and lost future income, and instructed the jury that the plaintiff could not recover loss of society damages if she was not financially dependent on her son. The jury found Apex negligent, Torregano contributorily negligent, and the vessel seaworthy. Damages were awarded to Mrs. Miles for loss of support and services, and the estate was awarded damages for Torregano's pain and suffering. No award for loss of society was made, as the jury determined Mrs. Miles was not financially dependent on her son. On appeal, the United States Court of Appeals for the Fifth Circuit affirmed the finding of negligence on the part of Apex and reversed the jury's finding of contributory negligence. *Miles v. Apex Marine Corp.*, 882 F.2d 976, 983-85. The Court of Appeals also held that the M/V ARCHON was unseaworthy as a matter

of law, but that the general maritime law did not permit recovery for loss of society by a nondependent parent, or a survival action for lost future earnings. *Id.*, at 983, 987, 989. As to the Respondent's claim for punitive damages, the Fifth Circuit affirmed the availability of punitive damages under the general maritime law "upon a showing of willful and wanton misconduct by the shipowner in failing to provide a seaworthy vessel," but found that punitive damages were not justified by the facts of the case. *Id.*, at 989 citing *Protectus Alpha Navigation Co.*, 767 F.2d at 1386. This Court granted writs of certiorari. 494 U.S. 1003, 110 S. Ct. 1295, 108 L. Ed. 2d 472 (1990).

The Court began its opinion by affirming the holding of *Moragne v. States Marine Lines, Inc.*, 398 U.S. 375, 90 S. Ct. 1772, 26 L. Ed. 2d 339 (1970), recognizing a cause of action under the general maritime law for wrongful death. As per Justice O'Conner, the Court noted:

> We have described *Moragne* at length because it exemplifies the fundamental principles that guide our decision in this case. We no longer live in an era when seamen and their loved ones must look primarily to the courts as a source of substantive legal protection from injury and death; Congress and the States have legislated extensively in these areas. In this era, an admiralty court should look primarily to these legislative enactments for policy guidance. We may supplement these statutory remedies where doing so would achieve the uniform vindication of such policies consistent with our constitutional mandate, but we must also keep strictly within the limits imposed by Congress. Congress retains

> superior authority in these matters, and an admiralty court must be vigilant not to overstep the well-considered boundaries imposed by federal legislation. These statutes both direct and delimit our actions.

Miles v. Apex Marine Corp., 498 U.S. 19, 27, 111 S. Ct. 317, 323, 112 L. Ed. 2d 275 (1990).

The Court declined Apex's invitation to limit *Moragne* to its facts, which involved the death of a longshoreman, and held that there was indeed a wrongful death cause of action under the general maritime law for a Jones Act seaman as well as for a longshoreman. *Id.*, at 30, 111 S. Ct. at 324.

This Court went on to address the issue of what damages could be recovered in a wrongful death action under the general maritime law. In *Mobil Oil Corp. v. Higginbotham*, 436 U.S. 618, 98 S. Ct. 2010, 56 L. Ed. 2d 581 (1978), the Court held that the general maritime law could not provide for recovery of nonpecuniary losses when the death occurred on the high seas, because the DOHSA limited recovery to pecuniary loss only. *Because Congress had directly addressed the issue of recoverable damages*, the general maritime law could not "supplement" the relief provided by Congress. *Id.*, at 625, 98 S. Ct. 2015. However, the general maritime law *could* provide for the recovery of nonpecuniary damages in a situation where Congress had *not* proscribed the available remedies. In so concluding, the *Miles* court reaffirmed the holding of *Sea-Land Services, Inc. v. Gaudet*, 414 U.S. 573, 94 S. Ct. 806, 39 L. Ed. 2d 9 (1974), providing that nonpecuniary damages could be recovered by the widow of a longshoreman who died in territorial waters. The *Gaudet*

decision addressed a factual scenario not covered by either the Jones Act or DOHSA. *Miles*, 498 U.S. at 30-31, 111 S. Ct. at 324-25.

Finding that the Jones Act precluded recovery for loss of society in a wrongful death case, the Court concluded that such damages must also be unavailable in a claim for the wrongful death of a Jones Act seaman brought under the general maritime law. In so doing, the Court implemented a uniform rule applicable to all actions for the wrongful death of a seaman, whether such claims were brought pursuant to DOHSA, the Jones Act, or the general maritime law. *Id.*, at 33, 111 S. Ct. at 326. The Court declined to address the question of whether the general maritime law provides a survival action, finding that lost future income was not a recoverable item of damages in a survival action brought under the Jones Act. Therefore, the Court held such damages could not be recovered in a Jones Act seaman's wrongful death action under the general maritime law. *Id.*, at 36, 111 S. Ct. at 328.

The rationale of this Court's opinion is clear. Punitive damages were not discussed in the opinion, but the opinion of the Fifth Circuit holding that such damages were recoverable under the general maritime law was affirmed. *See* Stephen K. Carr, *Living and Dying in the Post*-Miles *World: A Review of Compensatory and Punitive Damages Following Miles v. Apex Marine Corp.*, 68 Tul. L. Rev. 595, 617 (1994). The holding is based on deference to Congressional enactments providing certain forms of relief to certain classes of claimants. Consequently, as the Louisiana Third Circuit Court of Appeal held in this case, if there are no Congressional enactments providing relief to claimants such as Mr. Doxey, the holding of *Miles* is inapplicable.

The *Miles* opinion makes no mention of punitive damages, nor does it give any indication that it is applicable to any factual scenario not covered by the Jones Act or the DOHSA. Arguably, the existence of other federal statutes proscribing certain forms of relief in other maritime actions might be affected by the Court's opinion in *Miles*. However, there is no dispute in this case that *there is no applicable federal or state statute providing relief to Mr. Doxey*. His sole basis for relief is pursuant to the general maritime law.

III. RECENT CASES RECOGNIZE THE CONTINUED AVAILABILITY OF PUNITIVE DAMAGES UNDER THE GENERAL MARITIME LAW FOR CASES INVOLVING NONSEAFARERS.

Writing in 1997, more than six years after this Court's decision in *Miles*, Professor Robertson could locate *no property damage case denying the availability of punitive damages under the general maritime law*. David W. Robertson, *Punitive Damages in American Maritime Law*, 28 J. Mar. L. & Com. 73, 160. Professor Robertson cited several maritime property damages cases rendered subsequent to *Miles* holding that punitive damages were a recoverable item of damages under the general maritime law including *Gamma-10 Plastics, Inc. v. American President Line, Ltd.*, 32 F.3d 1244, 1257, 1995 AMC 909 (8th Cir. 1994), *cert. denied*, 513 U.S. 1198, 115 S. Ct. 1270, 131 L. Ed. 2d 148 (1995); *Jones v. Compagnie Generale Maritime*, 882 F. Supp. 1079, 1083-85, 1995 AMC 2573 (S.D. Ga. 1995); *Leather's Best Int'l Inc. v. M/V Lloyd Sergipe*, 760 F. Supp. 301, 313, 1991 AMC 1929 (S.D.N.Y. 1991); *Hudson River Cruises, Inc. v. Bridgeport Drydock Corp.*, 892 F. Supp. 380, 386 (D. Conn. 1994); and *CEH*

Inc. v. F/V Seafarer, 70 F.3d 694 (1st Cir. 1995). Other more recent property damage cases are discussed, *infra*, including *Maritrans Operating Partners v. DIANA T, M/V*, 1999 WL 127250 (E.D. La.) and *BP Exploration & Oil, Inc. v. Moran Mid-Atlantic Corp.*, 147 F. Supp. 2d 333 (D.N.J. 2001).

The inapplicability of *Miles* and *Guevara v. Maritime Overseas Corp.*, 59 F.3d 1496 (5th Cir. 1995), was specifically addressed by the United States First Circuit Court of Appeal in *CEH, Inc. v. F/V Seafarer*, 70 F.3d 694 (1st Cir. 1995). In *Guevara*, the Fifth Circuit held that punitive damages were no longer available for willful nonpayment of maintenance and cure to a Jones Act seaman. In *CEH*, the First Circuit affirmed an award of punitive damages against the owner and captain of a trawler vessel that deliberately destroyed plaintiffs' lobster traps. The court reasoned that *Guevara* merely illustrated that *Miles* may be applicable in those areas of maritime law where there is an overlap between statutory and decisional law. However, in this property damage case, there was no legislation addressing the circumstances involving reckless destruction of property. In the absence of any relevant legislation, the uniformity principle expressed in *Miles* was inapplicable. Therefore, the plaintiffs were entitled to forms of relief traditionally available under the general maritime law, including punitive damages. *Id.*, at 699-702.

In support of the contention that punitive damages are not available for general maritime law claims, Petitioner Lake Charles Pilots asserts that the majority of cases arising from the Eastern District of Louisiana would disallow recovery for punitive damages under the general maritime law. *See* Petitioner's Brief in Support of Petition for Writ of

Certiorari, pp. 5-6. Petitioner cites eighteen cases in support of this statement.[1] Of these eighteen cases, five actually *permit* the recovery of punitive damages in general maritime law claims, *Davis v. Penrod Drilling Corp.*, 1991 WL 264541 (E.D. La.); *Hannon v. Waterman Steamship Corp.*, 1991 WL 278996 (E.D. La.); *Logue v. Tidewater, Inc.*, 1992 WL 59409 (E.D. La.); *Rutherford v. Mallard Bay Drilling, L.L.C.*, 2000 WL 805230 (E.D. La.); and *Tate v. Zapata Gulf Marine Construction*, 1993 WL 346190 (E.D. La.). And of the remaining thirteen cases, *only four* do not involve the claims of Jones Act seamen, *Baker v. Wilrig (U.S.A.), Inc.*, 1992 WL 236926 (E.D. La.); *Bardwell v. George G. Sharp, Inc.*, 1995 WL 517120 (E.D. La.); *Hayden Acadian Gas Pipeline Systems TXO*, 1997 WL 382059 (E.D. La.); and *Williams v. Texaco, Inc.*, 1997 WL 250009 (E.D. La.). Moreover, Petitioner fails to mention *seven* other cases from the Eastern District, and one from the Western District, all rendered since *Miles*, all affirming the continued availability of general maritime law punitive damages claims. *See Rebstock v. Sonat Offshore Drilling*, 764 F. Supp. 75 (E.D. La. 1991); *Duplantis v. Texaco, Inc.*, 771 F. Supp. 787 (E.D. La. 1991); *Kartofilis v. Louis Dreyfus Corp.*, 1993 WL 483576 (E.D. La.); *Maritrans Operating Partners v. DIANA T, M/V*, 1999 WL 144458 (E.D. La.); *In the Matter of Denet Towing Service, Inc.*, 1999 WL 329698 (E.D. La.); *Liner v. Dravo Basic Material Company*, 2000 WL 1693678 (E.D. La.); *Moore v. M/V ANGELA*, 2001 WL 803743 (E.D. La.); and *Bergeron v. Atlantic Pacific Marine*, 899 F. Supp. 1544 (W.D. La. 1993). Respondent does not mean to imply that the issue presented to the Louisiana Third-

1. *Id.*, at p. 6 n.1. Although twenty cases are actually listed, two of these, *Anderson v. Texaco, Inc.*, 797 F. Supp. 531 (E.D. La. 1992), and *Donaghey v. Ocean Drilling & Exploration Co.*, 1991 WL 99490 (E.D. La. 1992), are cited twice.

Circuit Court of Appeal, the Louisiana Supreme Court, and this Court should be resolved by determining the number of decisions affirming or denying the rights of plaintiffs to recover punitive damages in general maritime law claims; this information is provided to correct any misconception which might arise from the cited portions of Petitioner's Brief.

The bulk of Petitioner's argument consists of a lengthy quotation from a single opinion of the United States District Court for the Eastern District of Louisiana, *In re Diamond B Marine Services, Inc.*, 2000 WL 222847 (E.D. La.). However, subsequent to Judge Schwartz's decision in that case, other opinions of the Eastern District and elsewhere have recognized the continued availability of punitive damages under the general maritime law. In *Liner v. Dravo Basic Material Company*, 2000 WL 1693678 (E.D. La.), the plaintiffs were operating a seventeen-foot recreational boat in Louisiana territorial waters when they struck a sunken barge. The action filed by the plaintiffs included claims for punitive damages and loss of consortium. Noting that the plaintiffs were not Jones Act seamen, "and are thus not covered by any of Congress' maritime statutes," Judge Barbier concluded that this Court's decision in *Miles* did not preclude their claim for punitive damages. *Id.*, at *3. The plaintiffs were allowed to supplement their maritime remedies with a claim for loss of consortium under Louisiana law. Further, the district court noted that "the current trend is that in certain limited circumstances (punitive) damages are allowable." *Id.*, at *4, citing *Rutherford v. Mallard Bay Drilling, L.L.C.*, 2000 WL 805230 (E.D. La.); *In the Matter of Denet Towing Service, Inc.*, 1999 WL 329698 (E.D. La.); and *Maritrans Operating Partners v. DIANA T, M/V*, 1999 WL 144458 (E.D. La.).

Rutherford v. Mallard Bay Drilling, L.L.C., 2000 WL 805230 (E.D. La.), cited by Judge Barbier in *Liner*, was also rendered subsequent to Judge Schwartz's opinion in *In re Diamond B Marine Services, Inc.*, 2000 WL 222847 (E.D. La.). In *Rutherford*, the plaintiff was working as a floor hand on an inland drilling barge at the time of his injury. He brought an action pursuant to 33 U.S.C. § 905(b) of the Longshore and Harbor Workers' Compensation Act and the general maritime law, seeking compensatory and punitive damages against his employer, in the employer's capacity as owner of the drilling rig vessel.[2] The defendant employer contended that plaintiff was not entitled to punitive damages under the general maritime law, but the district court held that the plaintiff's cause of action under the general maritime law was based on nonstatutory negligence principles. *Id.*, at *2. Therefore, the uniformity principles enunciated in *Miles* and *Guevara* did not preclude an award of punitive damages. The district court noted that the United States Fifth Circuit Court of Appeal had recognized the continued viability of this Court's decision in *Sea-Land Services, Inc. v. Gaudet*, 414 U.S. 573, 94 S. Ct. 806, 39 L. Ed. 2d 9 (1974), in *Randall v. Chevron, U.S.A., Inc.*, 13 F.3d 888 (5th Cir. 1994), *opinion modified on denial of rehearing by*, 22 F.3d 568, 1994 AMC 2492 (5th Cir. 1994),[3]

2. Under Section 905(b) of the LHWCA, an employee is not precluded by the exclusive remedy provisions of the Act from bringing a claim against his employer for vessel negligence, if his employer is also the owner of the vessel on which he is injured.

3. Interestingly, on denial of rehearing, the Fifth Circuit deleted the following footnote from its original opinion:

> FN6. The limitation of the *Gaudet* rule to longshoremen injured in state territorial waters has been scrupulously observed. *See Robertson v. Arco Oil and Gas Co.*, 766

(Cont'd)

cert. dismissed sub nom. Sea Savage, Inc. v. Chevron U.S.A., Inc., 512 U.S. 1265, 115 S. Ct. 5, 129 L. Ed. 2d 906 (1994), *cert. denied sub nom., Sea Savage, Inc. v. Chevron U.S.A., Inc.*, and *Chevron U.S.A., Inc. v. Sea Savage, Inc.*, 513 U.S. 994, 115 S. Ct. 498, 130 L. Ed. 2d 408 (1994) and *Nichols v. Petroleum Helicopters, Inc.*, 17 F.3d 119, 122-23 (5th Cir. 1995). Therefore, the "effective" overruling of *In re Merry Shipping, Inc.*, 650 F.2d 622 (5th Cir. 1981), in *Guevara* had no application to a non-Jones Act case. Instead, the Fifth Circuit has recognized that *Guevara* left open the possibility of recovery of punitive damages in certain maritime scenarios in its opinion in *Galveston County Navigation Dist. No. 1 v. Hopson Towing Co.*, 92 F.3d 353, 358, at n.12 (5th Cir. 1996). The rationale of the *Rutherford* decision clearly indicates that Petitioner Lake Charles Pilots' assertion that *Miles* and *Guevara* have eliminated the possibility of recovery of punitive damages in all types of admiralty cases is not a correct statement of the law. In truth, the Fifth Circuit has *never* held that punitive damages are unavailable under the general maritime law in a case not involving the Jones Act or the Death on the High Seas Act.

As noted, the two other cases cited by Judge Barbier in *Liner* in support of his conclusion that the current trend in maritime law is recognition of the continued availability of punitive damages were *In the Matter of Denet Towing Serv., Inc.*, 1999 WL 329698 (E.D. La.) and *Maritrans Operating Partners v. DIANA T. M/V*, 1999 WL 144458 (E.D. La.).

(Cont'd)

F. Supp. 535, 539 (W.D. La. 1991) (holding that a dependent of a longshoreman injured on the outer continental shelf rather than in state territorial waters may not recover damages for loss of the longshoreman's consortium), *aff'd* 948 F.2d 132 (5th Cir. 1991).

In *Denet Towing*, the personal representative of a Jones Act seaman brought a claim against a third party defendant (not his employer), seeking a variety of nonpecuniary damages, including punitive damages. Denying summary judgment as to the claim for punitive damages, Judge Lemmon held:

> The Fifth Circuit has held punitive damages to be barred in some circumstances as "non-pecuniary." *Guevara*, 59 F.3d at 1506, n.7. *See also In Re Waterman Steamship Corp.*, 780 F. Supp. 1093 (E.D.La. 1992); 1 Schoenbaum 5-17 (Supp. 1997); and Robertson, 28 J. Mar. L. & Com. at 147-50. However, *Guevara* concerned only punitive damages for the employer's failure to pay maintenance and cure; the court had no need to address other grounds for allowing punitive damages. After characterizing punitive damages as non-pecuniary, and after identifying an "overlap" between the maintenance and cure action and the Jones Act, the court applied *Miles* broadly to disallow them. *Guevara*, 59 F.3d at 1506-7, 1510-12.
>
> However, despite post-*Miles* turmoil, punitive damages are awardable generally to maritime tort victims where sufficiently egregious conduct is proved, because, "there is no indication in *Miles* of disapproval of the long line of cases allowing punitive damages under the general maritime law." 1 Schoenbaum, 5-17, at p. 214. Specifically, punitive damages are available to seamen in "general maritime law claims for negligence where the Jones Act is not involved" (i.e., because

there is not a statutory overlap). 1 Schoenbaum 5-17, at p. 214 (citing *Massa*, 802 F. Supp. 84). (FN10)

> FN10. Before *Miles*, punitive damages were generally available in personal injury or death cases where the defendant's conduct was especially egregious. *In re Cameron Boat Rentals, Inc.*, 683 F. Supp. 577, 586 (W.D. La. 1989); *In re Merry Shipping, Inc.*, 650 F.2d 622, 626 (5th Cir. 1981); *Churchill v. F/V Fjord*, 892 F.2d 763 (9th Cir. 1988); *United States Steel Corp. v. Fuhrman*, 407 F.2d 1143, 1148 (6th Cir. 1969); *Evich v. Morris*, 819 F.2d 256, 257-58 (9th Cir. 1987). *See also* Robertson, 28 J. Mar. L. & Com. at 133. *See also* Thomas J. Schoenbaum, *Admiralty and Maritime Law*, 5-17, pp. 212-215 (1994 & Supp. 1997).

Like the case sub judice, *Maritrans Operating Partners v. DIANA T, M/V*, 1999 WL 144458 (E.D. La.), was a maritime claim for property damage. The plaintiff sought punitive damages, contending that the damage to its vessel occurred because the defendant's captain was operating the DIANA T while under the influence of marijuana, and because the defendant shipowner failed to properly screen its employees for drug use. The defendant shipowner argued that, after *Miles* and *Guevara*, punitive damages were no longer available under the general maritime law. However, the court disagreed, holding that "without an overlap between the Jones Act and the general maritime law invoked by the plaintiff, *Guevara* and *Miles* simply do not apply." *Id.*, at *7.

Other very recent decisions have affirmed the continued availability of punitive damages under the general maritime law in cases not involving Jones Act seamen. For example, in *Norwalk Cove Marina, Inc. v. S/V Odysseus*, 90 F. Supp. 2d 190 (D. Conn. 2000), the court held that admiralty law was applicable to the plaintiff's claim for breach of contract and fraud, and that punitive damages were recoverable in maritime tort actions wherein a defendant's actions are "intentional, deliberate, grossly negligent, or so wanton and reckless as to demonstrate a conscious disregard for the rights of others." *Id.*, at 193.

In re Horizon Cruises Litigation, 101 F. Supp. 2d 204 (S.D.N.Y. 2000), was an action brought by cruise line passengers who contracted Legionnaires' Disease while aboard ship. Claims for negligence, fraud and breach of contract were brought against the operator of the cruise line. Plaintiffs also brought products liability claims against the manufacturer of a filter used in the whirlpool spa system aboard the vessel, which was alleged to be the place where the disease originated. Some plaintiffs filed a motion to add claims for punitive damages, which were opposed by the defendants. Defendants contended that all claims were governed by admiralty law, which disallowed any claim for punitive damages.

The court agreed that maritime law governed all plaintiffs' claims, but disagreed with the argument that punitive damages were unavailable. Discussing in great detail the history of punitive damages in admiralty, the court noted that punitive damages had been awarded to passengers in maritime cases as early as 1823. *Id.*, at 210, citing *Chamberlain v. Chandler*, 5 F.Cas. 413 (C.C.D. Mass. 1823). Moreover, from the early nineteenth century, maritime

jurisprudence recognized the availability of punitive damages in other types of admiralty cases. *See* cases cited at 101 F. Supp. 2d 210-11. The court noted that although the *Miles* decision resulted in abrogation of a Jones Act seaman's right to claim punitive damages under the general maritime law in a wrongful death claim against his employer, this Court's later decision in *Yamaha Motor Corp., U.S.A. v. Calhoun*, 516 U.S. 1999, 116 S. Ct. 619, 133 L. Ed. 2d 578 (1996), "sheds new light on *Miles*." 101 F. Supp. 2d at 212. In *Yamaha,* this Court held that the desire for uniformity in the maritime law did not preclude the availability of state law remedies for the wrongful deaths of nonseafarers occurring in territorial waters. The result is that *Miles* does not enunciate an absolute bar to recovery of punitive damages in all general maritime cases. *Id.*, at 213. In passing the Jones Act, "Congress was expanding the relief available to maritime workers; it gave no hint that it was implicitly repealing the remedies that had traditionally been available to nonseamen." *Id.*, at 214. Allowing the plaintiffs' claims for punitive damages, the court concluded:

> (T)hese anomalies are an artifact of the interaction between general maritime law and the succession of specific congressional enactments. Their existence does not justify using legislation intended to expand remedies for one set of plaintiffs as a means for contracting remedies otherwise available to a different group of plaintiffs whose circumstances have not been addressed by Congress. *Yamaha* now makes it clear that principles of uniformity do not reach so broadly.

Id.

A New Jersey district court recently recognized the continued availability of punitive damages in maritime property damage cases in *BP Exploration & Oil, Inc. v. Moran Mid-Atlantic Corp.*, 147 F. Supp. 2d 333, 344-45 (D.N.J. 2001), citing *Churchill v. F/V Fjord*, 892 F.2d 763 (9th Cir. 1988); *The Amiable Nancy*, 16 U.S. (3 Wheat.) 546 (1818); *Leather's Best Int'l, Inc. v. M/V Lloyd Sergipe*, 760 F. Supp. 301, 1991 AMC 1929 (S.D. Ga. 1995); *CEH, Inc. v. F/V Seafarer*, 70 F.3d 694 (1st Cir. 1995); *Self v. Great Lakes Dredge & Dock Co.*, 832 F.2d 1540, 1550 (11th Cir. 1987); and *Bergen v. F/V Patrick*, 816 F.2d 1345, 1347-48 (9th Cir. 1987). *See also In re Air Crash Off Point Mugu, California on January 30, 2000*, 145 F. Supp. 2d 1156, 1166 (N.D. Cal. 2001) (acknowledging the availability of punitive damages in maritime wrongful death and survivor actions brought by the beneficiaries of nonseafarers).

In further support of the contention that the recent trend in maritime law is recognition of the continued viability of a punitive damage claim brought by a non-Jones Act seaman, Respondent Doxey refers the Court to *Poe v. PPG Industries*, 2000-1141 (La. App. 3 Cir. 3/28/01, 782 So. 2d 1168, *writ denied*, 2001-1239 (La. 6/22/01), __ So. 2d __, 2001 WL 761287 (La. Jun. 22, 2001) (No. 2001-C-1239). Plaintiffs were commercial fishermen who brought a claim against the operator of a chemical plant, its employees and insurers, for damages resulting from pollution of their fishing grounds. The trial court granted a cross-motion for summary judgment in favor of the fishermen, holding that punitive damages were still available under the general maritime law subsequent to this Court's decision in *Miles*.[4] The defendants argued on

4. Plaintiffs' motion was directed only to the *availability* of such a remedy under the general maritime law; not to the issue of whether punitive damages should be awarded on the facts of this particular case.

appeal that this Court's decision in *Miles* and the opinion of the Fifth Circuit in *Guevara* rendered punitive damages unavailable to the fishermen plaintiffs as a matter of law. The Third Circuit, as per Judge Thibodeaux, began by noting that *Miles* made no reference to punitive damages. Rather, this Court held that since loss of society damages were not recoverable under the Jones Act, such damages were unavailable under a general maritime law claim for unseaworthiness brought by a nondependent parent of a Jones Act seaman. The goal of the *Miles* Court, according to Judge Thibodeaux, was to achieve uniformity in cases brought under the general maritime law where Congress has provided an applicable scheme of recovery, such as the Jones Act or DOHSA. As the court noted, "*Miles,* therefore, does not . . . signify a call for universal uniformity of maritime tort remedy, but rather emphasizes the importance of uniformity in the face of applicable *relevant* legislation." 782 So. 2d at 1173.

The Third Circuit went on to recognize that punitive damages, though rarely imposed, have long been available in maritime actions, even prior to passage of the Jones Act. *Id.*, citing *The Amiable Nancy*, 16 U.S. (3 Wheat.) 546 (1818); *Muratore v. M/S Scotia Prince*, 845 F.2d 347 (1st Cir. 1988); *Protectus Alpha Navigation Co. v. North Pac. Grain Growers*, 767 F.2d 1379, 1986 AMC 56 (9th Cir. 1985). Moreover, the basis of the Fifth Circuit's holding in *Guevara* precluding the recovery of punitive damages for failure to provide a Jones Act seaman with maintenance and cure was the potential statutory/general maritime law overlap in the factual circumstances giving rise to the claim. Therefore, *Guevara* does not support the contention that punitive damages are never available in general maritime law claims, but "merely illustrates that *Miles* may be applicable in those

areas of maritime law where, at the very least, there is an overlap between statutory and decisional law." 782 So. 2d at 1174. Finding no statutory overlap present in the claim of the commercial fishermen, the court concluded that their claim for punitive damages remained viable.

> Absent statutory authority, courts in admiralty cases apply the general maritime law, a body of judge-made federal common law pertaining to admiralty. *East River S.S. Corp. v. Transamerica Delaval, Inc.*, 476 U.S. 858, 106 S. Ct. 2295, 90 L. Ed. 2d 865 (1986). "(C)ertainly it better becomes the humane and liberal character of proceedings in admiralty to give than to withhold the remedy, when not required to withhold it by established and inflexible rules." *Moragne v. States Marine Lines, Inc.*, 398 U.S. 375, 387, 90 S. Ct. 1772, 1781, 26 L. Ed. 2d 339 (1970). The only established rules against punitive damages are the limitations of the DOHSA and the Jones Act, neither of which is applicable to the facts of the present case. Thus, the decisions of *Miles* and *Guevara* do not act as legal impediments to the fishermen to seek punitive damages.

Id., at 1174.

IV. THE DECISION OF THE FIRST CIRCUIT COURT OF APPEALS IS NOT IN CONFLICT WITH THE FIFTH, NINTH AND ELEVENTH CIRCUITS.

In the final section of Petitioner Lake Charles Pilot's petition for certiorari, the argument is made that the decision of the United States First Circuit Court of Appeal in *CEH, Inc. v. F/V Seafarer*, 70 F.3d 694 (1st Cir. 1995), "is in conflict with the Fifth, Ninth and Eleventh Circuits." Petitioner's Brief in Support of Petition for Writ of Certiorari, p. 21. In support of this assertion, Petitioner Lake Charles Pilots merely sets forth a quotation from the court's opinion in *CEH* and concludes, "the First Circuit clearly points out the conflict among the circuits over the breadth of *Miles*." *Id.*, at p. 23. However, the cited portion of the *CEH* opinion makes no reference to any decision by the United States Eleventh Circuit Court of Appeal. The opinion does refer to the Fifth Circuit's opinion in *Guevara v. Maritime Overseas Corp.*, 59 F.3d 1496 (5th Cir. 1995), and the opinion of the Ninth Circuit in *Glynn v. Roy Al Boat Management Corp.*, 57 F.3d 1495 (9th Cir. 1995). In both these decisions, the Courts of Appeal held that a Jones Act seaman may not recover punitive damages for arbitrary and capricious failure to provide maintenance and cure. Respondent Doxey observes at the outset that the issue of whether *CEH* is or is not in conflict with other decisions of the federal courts of appeal is irrelevant to determination of whether a writ of certiorari should be granted in this case. In any event, the holdings of *Guevara* and *Glynn* present no conflict with either *CEH*, or the opinion of the Louisiana Court of Appeal for the Third Circuit in the case sub judice. In *CEH*, the court did not hold that *Guevara* was incorrectly decided, but distinguished *Guevara* and *Glynn* on the basis that these decisions "merely illustrate . . . that *Miles* may be applicable

in those areas of maritime law where, at the very least, there is an overlap between statutory and decisional law." 70 F.3d at 702. For the same reasons set forth by the Third Circuit in both *Doxey* and *Poe,* the First Circuit found these decisions, like *Miles* itself, simply inapplicable, because of the lack of statutory overlap presented in a case covered by neither the Jones Act or DOHSA. Respondent can only presume that the conflict with the Eleventh Circuit referenced by Petitioner in brief refers to *In re Amtrak "Sunset Ltd." Train Crash*, 121 F.3d 1421 (11th Cir. 1997), *cert. denied sub nom., Altosino v. Warrior & Gulf Navigation Co.*, 522 U.S. 1110, 118 S. Ct. 1041, 140 L. Ed. 2d 106 (1998), discussed at length in Petitioner's quotation from *In re: Diamond B Marine Services, Inc.* However, the Eleventh Circuit actually held in *Amtrak that the wrongful death beneficiaries of nonseamen could recover punitive damages under the general maritime law* upon a showing of intentional or wanton and reckless conduct. As authority for this conclusion, the Eleventh Circuit in *Amtrak* cited *CEH*. 121 F.3d at 1427-28. Moreover, the United States Eighth Circuit Court of Appeal has also recognized the continued availability of punitive damages under the general maritime law subsequent to this Court's decision in *Miles. See Gamma-10 Plastics, Inc. v. American President Line, Ltd.*, 32 F.3d 1244 (8th Cir. 1994), *cert. denied*, 513 U.S. 1188, 115 S. Ct. 1270, 131 L. Ed. 2d 148 (1995).

CONCLUSION

Petitioner has cited no case from this Court, any United States Court of Appeal, or the Louisiana Supreme Court, holding that punitive damages are unavailable under the general maritime law in all circumstances. In particular, Petitioner has cited no case from any jurisdiction holding that punitive damages are unavailable under the general maritime law in property damage cases. Indeed, as noted earlier, the United States Fifth Circuit has specifically recognized that, following *Miles* and *Guevara*, punitive damages may still be recoverable under the general maritime law. *Galveston County Navigation Dist. No. 1 v. Hopson Towing Co.*, 92 F.3d 353, 358 n.12 (5th Cir. 1996). Consequently, there is no basis whatsoever for Petitioner's assertion in brief that a conflict among the federal courts of appeal provides a basis for the granting of petition for writ of certiorari in this case.

The opinion of the Third Circuit Court of Appeal is well-reasoned and fully in accord with controlling legal precedent. The Court of Appeal's decision thoroughly discusses this Court's opinions in *Miles, Moragne,* and *Yamaha,* the federal appellate court opinions in *Guevara, CEH* and *Galveston County Navigation District No. 1*, and the federal district court opinions in *Liner* and *In re Horizon Cruises Litigation*. Based on these decisions, and the Third Circuit's own decision in *Strawder v. Zapata Haynie Corp.*, 94-453 (La. App. 3 Cir. 11/2/94), 649 So. 2d 554, the court evaluated the factual setting of the case and determined that no statutory remedial measures applied to the willful or reckless destruction of property. Since there was no applicable legislation limiting the damages available to the plaintiff, Doxey was entitled to make a claim for punitive damages,

a remedy traditionally available under the general maritime law. Because the court's analysis was entirely in keeping with the analytical framework provided by this Court in *Miles*, Petitioner's Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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